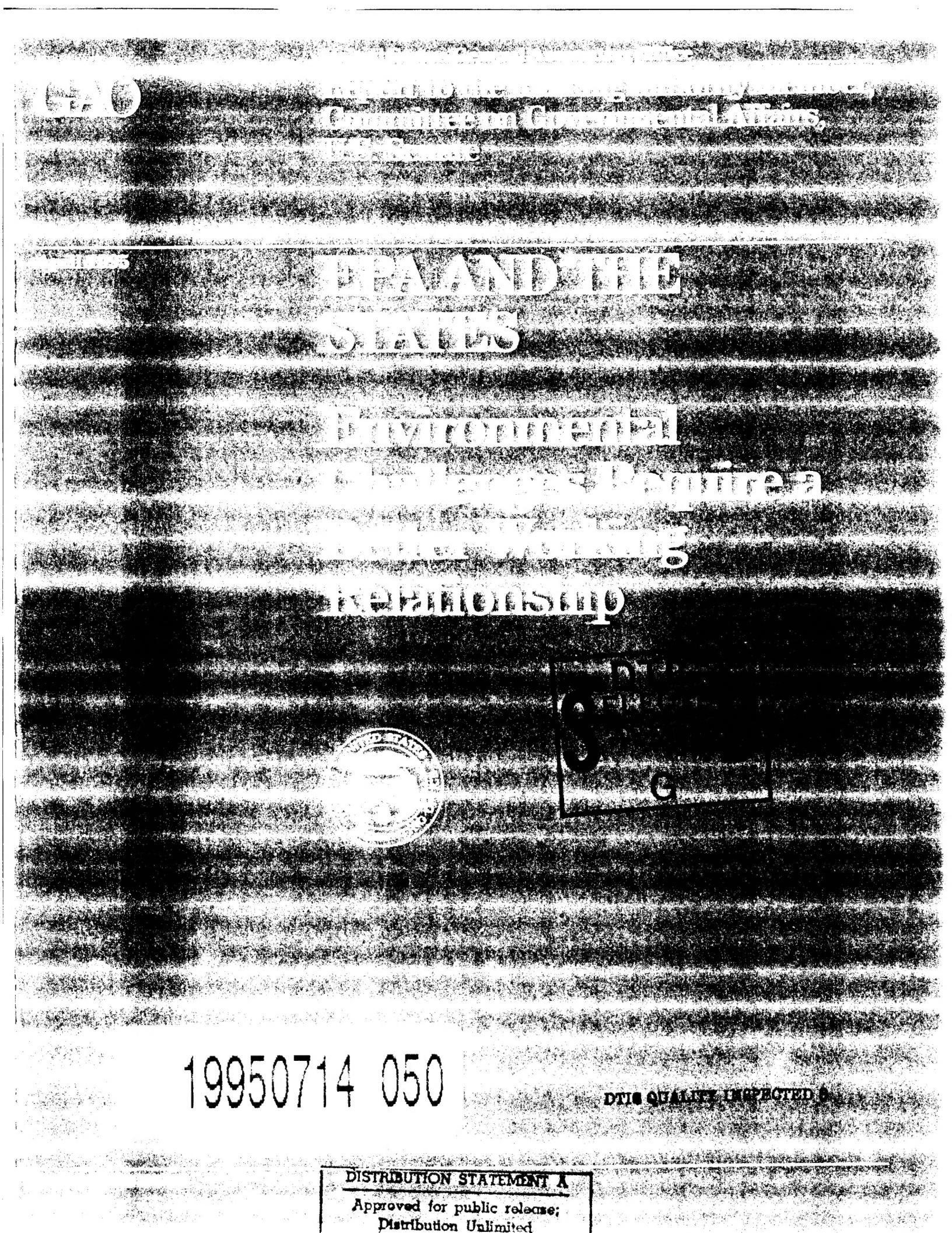


19950714 050

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-259433

April 3, 1995

The Honorable John Glenn
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

Dear Senator Glenn:

As requested in your October 9, 1992, letter and in subsequent discussions with your office, we have examined (1) the difficulties that the Environmental Protection Agency (EPA) and the states have had in implementing federal environmental requirements, (2) the reasons that they have had these difficulties, and (3) the ways that they can improve their ability to carry out the requirements.

As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the appropriate congressional committees; the Administrator, EPA; and the Director, Office of Management and Budget. We will also make copies available to others upon request.

Please contact me on (202) 512-6111 if you or your staff have any questions. Major contributors to this report are listed in appendix I.

Sincerely yours,

Peter F. Guerrero
Director, Environmental
Protection Issues

Executive Summary

Purpose

The Congress designed most federal environmental programs so they could be administered at the state and local levels. Such a framework was intended to draw upon the strengths of federal, state, and local governments to protect the nation's environmental resources. Accordingly, once a state demonstrates that it is capable of implementing an environmental program, the Environmental Protection Agency (EPA) delegates most day-to-day responsibilities to the state (i.e., EPA "authorizes" the state to implement the program). After delegation, EPA regions, with guidance from headquarters, continue to set goals for the states, provide them with financial assistance through grants, and monitor their performance in meeting grant and program requirements.

Concerned about the working relationship between EPA and the states and the impact of that relationship on the states' ability to implement federal environmental laws, the Ranking Minority Member of the Senate Committee on Governmental Affairs asked GAO to assess issues underlying this relationship. As agreed, GAO examined (1) whether EPA and the states have had difficulty implementing federal environmental requirements, (2) to the extent that they have had difficulty, why the difficulty has occurred, and (3) how they can improve their ability to carry out the requirements.

Background

Upon obtaining authorization from EPA, states become responsible for regulating key programs, such as those for regulating how facilities handle hazardous waste, discharge pollutants into surface water, or provide drinking water to citizens. States also inspect facilities to verify compliance and pursue enforcement actions against those found in violation. If EPA finds a state's performance deficient, a region may, among other things, provide additional assistance, impose grant sanctions, or withdraw the state's authorization and take over the program.

GAO reviewed three programs that rely heavily on authorized states for implementation: the hazardous waste program authorized by the Resource Conservation and Recovery Act, the National Pollutant Discharge Elimination System program authorized by the Clean Water Act, and the Public Water Supply Supervision program authorized by the Safe Drinking Water Act. To examine the effect that the EPA/state relationship might have on the implementation of these programs, GAO, among other things,

contacted the state program managers in 16 states,[1] EPA officials at headquarters and in three regional offices, and representatives of environmental and industry groups. GAO also analyzed its own prior reviews, as well as those by EPA and others.

Results in Brief

Most states authorized to manage federal environmental programs have at times been unable to meet some of the requirements for implementing these programs. Many states have had difficulty performing key functions, such as monitoring environmental quality, setting standards, issuing permits, and enforcing compliance. Consequently, states have become increasingly reluctant to accept the additional responsibilities associated with recent environmental laws.

EPA and state officials uniformly acknowledged that resource limitations are a major cause of these problems: Federal funding has not kept pace with new environmental requirements, and the states have been unable to make up the difference. Many EPA and state officials contacted by GAO linked this resource gap to the "unfunded mandates" debate that has gained widespread attention in the Congress and elsewhere in recent years. The resource shortage, however, has been exacerbated because EPA has sometimes required states to apply scarce resources to national priorities at the expense of some of their own environmental concerns.

Also affecting the EPA/state relationship have been states' concerns that EPA (1) is inconsistent in its oversight across regions, (2) sometimes micromanages state programs, (3) does not provide sufficient technical support for increasingly complex state program requirements, and (4) often does not adequately consult states before making key decisions affecting them. EPA officials acknowledged to GAO that these concerns have, in fact, affected the EPA/state relationship.

To its credit, EPA has sought to improve its working relationship with the states. Among other things, it has attempted to clarify federal and state responsibilities through task force reports and policy statements, as well as to involve states in major decisions through several EPA/state work groups. Although some of the state managers GAO contacted indicated that their relationship with EPA had improved over the past 5 to 10 years, long-standing concerns over resource allocation, oversight, and other key

[1]Specifically, GAO mailed questionnaires to the state managers of the 44 programs authorized by EPA in the 16 states; 43 of the 44 managers responded. GAO also telephoned these 44 managers plus 4 managers of state programs that are not authorized by EPA; 47 of the 48 managers agreed to be interviewed.

issues still need to be resolved. GAO is making a number of recommendations, detailed in chapter 5, to address these issues.

Principal Findings

States Have Had Difficulty Meeting Environmental Requirements

GAO's audits of federal environmental programs over the past several years show that many high-priority program requirements are not being met—and GAO's recent contacts with state and EPA officials indicate that many of these problems remain. For example, state environmental officials in 15 of the 16 states GAO contacted said that resource shortages forced them to curtail important activities, such as adopting key EPA drinking water regulations and conducting vital monitoring activities. Similarly, two-thirds of the managers of the state National Pollutant Discharge Elimination System programs whom GAO interviewed said that they have been tardy in establishing pollution discharge limits for new and existing facilities.

Acknowledging the challenges they face in meeting current requirements, 83 percent of the state program managers GAO interviewed expressed reservations about accepting new program responsibilities. For example, drinking water program officials from 13 of the 16 states contacted said they would have to curtail key activities, such as sanitary surveys, if they had to implement any additional requirements without receiving sufficient increases in federal funding. These surveys are preventive inspections that many state officials consider to be the backbone of their drinking water protection efforts because the inspections can identify minor problems before these problems become major. Similarly, officials of the state National Pollutant Discharge Elimination System and Resource Conservation and Recovery Act programs expressed concerns about their ability to implement stormwater and hazardous waste cleanup rules, respectively.

Key Factors Impair States' Performance and the EPA/State Relationship

Overall, the EPA and state officials GAO interviewed agreed that bringing program costs in line with program resources is the most important issue now confronting them. In this connection, EPA projected in 1990 that by the year 2000 state governments would have to spend an additional $1.2 billion annually, or approximately 46 percent more than they did in 1986, to maintain the same level of environmental protection. Concern for

rising state program costs was echoed by the majority of the state managers GAO contacted for this review—86 percent of those responding to GAO's mailed questionnaire said that the level of federal financial support adversely affected their program to a "great" or "very great" extent.

Compounding the problem, according to state officials, are EPA requirements that sometimes preclude states from spending funds in what they consider to be the most cost-effective ways. For example, Wisconsin drinking water officials told GAO that EPA requires them to monitor for certain radioactive contaminants even though the state has years of data showing that such contaminants do not exist in the state's water supplies. The officials maintained that the money spent on monitoring these contaminants would provide greater environmental benefits if it were spent on sanitary surveys and other preventive programs. EPA drinking water officials agreed but noted that the agency's regulations do not currently allow monitoring waivers for these contaminants.

Other factors have also strained the EPA/state relationship and made programs more difficult to implement. One frequently cited concern is that disparities may exist in how EPA regions oversee states. Seventy-two percent of the program managers interviewed by GAO said they believe EPA regional offices treat the states inconsistently. In their view, this treatment raises questions of fairness or causes other problems. However, some state managers acknowledged that if they had more complete information about how programs are implemented in other states, they might better understand the reasons for the variation and feel less "singled out" by EPA. In responding to states' concerns over this issue, EPA acknowledged that it does not know to what extent this "inconsistency" (1) is merely the appropriate exercise of flexibility authorized by environmental statutes, (2) is inappropriate and raises genuine questions of fairness, or (3) is less a reality than a perception arising from miscommunication or lack of information.

Another factor frequently cited by state officials is what they consider to be the micromanagement of their programs by EPA regions. Although some states noted improvement in this area, 63 percent of the state managers responding to GAO's questionnaire still found EPA's controls excessive. EPA countered—with some justification, according to past GAO reviews—that basic problems with state programs sometimes warrant close oversight. Despite these differences, however, state and EPA officials contacted by GAO agree that EPA should focus more on providing the states with

technical assistance, clarifying regulations, performing the technical research needed to support state environmental regulations, and giving states the flexibility to achieve environmental results from their programs without prescribing the precise steps they must take to achieve them.

Improving the EPA/State Relationship Depends on Translating Principles Into Actions

EPA tried as early as the 1970s to improve its relationship with the states. Indeed, many of the problems identified in this report were also identified by GAO in 1980. Since then, several administrators have called for improving the EPA/state relationship, and the agency has formed task forces and implemented program-specific efforts toward this end. Among other things, these efforts resulted in the development of broad principles stating that EPA should phase out its involvement in states' day-to-day decision-making and that it should increase its technical, administrative, and legal support for state programs.

As this report shows, however, EPA and the states have yet to develop the true partnership envisioned by past administrators and recommended by previous task forces. GAO believes the present challenge will be to translate the conceptual agreements and broad pronouncements resulting from these past efforts into specific actions (identified below and detailed in ch. 5) to address the resource, oversight, and other issues that have long complicated the EPA/state relationship.

Recommendations

GAO recommends that the Administrator, EPA, direct the agency's program offices (and/or regions, as appropriate)—within the context of current laws—to (1) work with the states to identify how each state's limited funds can be most efficiently and effectively allocated within each program to address the state's highest-priority environmental problems, (2) determine the extent to which regional inconsistencies in program implementation are merely the exercise of flexibility authorized by law or are inappropriate and warrant corrective measures, (3) improve regional oversight of the states by focusing oversight on helping the states to achieve improvements in environmental quality without prescribing the specific steps the states should take to achieve these improvements, (4) build on current efforts to improve communications between EPA and the states by consulting with the states earlier and more consistently on major policy decisions and facilitating the sharing of information between EPA and the states, and (5) track and report to the Administrator progress in implementing the above recommendations, in light of the complexity of

many problems in the EPA/state relationship and EPA's past difficulties in resolving them. (See ch. 5.)

Agency Comments

GAO discussed the factual information in this report with EPA officials, including deputy division directors and branch chiefs in EPA's Office of State and Local Relations, Office of Water (responsible for implementing the Safe Drinking Water Act and Clean Water Act), and Office of Solid Waste (responsible for implementing the Resource Conservation and Recovery Act). Generally, these officials characterized the report as a fair and balanced treatment of a complex issue. In several instances, they suggested technical clarifications and/or corrections, and they asked that GAO cite additional efforts by EPA to provide the states with more flexibility to meet program requirements and to help the states deal more effectively with other issues cited in this report. GAO made these changes where appropriate. As requested, GAO did not obtain written agency comments on a draft of this report.

Contents

Abbreviations

ASIWPCA	Association of State and Interstate Water Pollution Control Administrators
EPA	Environmental Protection Agency
GAO	General Accounting Office
NPDES	National Pollution Discharge Elimination System
OECA	Office of Enforcement and Compliance Assurance
SDWA	Safe Drinking Water Act
RCRA	Resource Conservation and Recovery Act
STARS	Strategic Targeted Activities for Results System
BIF	boilers and industrial furnaces

Introduction

The Congress designed federal environmental programs so that they could be administered at the state and local level. In administering these programs, the Environmental Protection Agency (EPA) intended to use the strengths of federal, state, and local governments in a partnership to protect public health and the nation's air, water, and land. Under this framework, EPA expects state and local governments to assume primary responsibility for the day-to-day implementation of national programs, while EPA is to provide national environmental leadership, develop general program requirements, establish standards as required by legislation, assist states in preparing to assume responsibility for program operations, and ensure some measure of consistency nationwide in states' compliance with environmental requirements.

For this framework to function as EPA intended and for environmental agencies at all levels to achieve their environmental goals, a healthy working relationship between the states and EPA is necessary. However, the EPA/state partnership has been difficult to achieve, and the relationship has often been characterized by fundamental disagreements over roles, program emphases, and funding.

EPA Relies Heavily on States to Carry Out Environmental Programs

Major environmental laws—such the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), and the Clean Water Act—assigned to EPA the key functions involved in the delivery of environmental programs, such as setting standards, issuing permits, and ensuring that program goals are met. However, these laws also allow states to assume these responsibilities. These early national environmental laws were enacted with a strong federal focus because public concern for the environment was widespread, the regulated community demanded that requirements be implemented fairly and with some degree of consistency across the states, and most state programs were not broad ranging and integrated.

As their capabilities grew, states gradually applied for and received more responsibilities until, today, operational responsibilities for most of EPA's major programs lie with the states. For the most part, EPA now depends on the states to implement the full range of environmental responsibilities associated with these programs, such as identifying the extent and sources of contamination, setting standards to be used as a basis for developing limits on a facility's discharges/emissions, translating these standards into facility-specific discharge permits, and monitoring facilities' compliance with the permits and taking appropriate enforcement action. Even when

responsibilities for programs have not been formally delegated, states often play a major role in day-to-day program activities.

EPA policy maintains that maximum delegation of national environmental programs to the states is necessary to achieve the most efficient use of federal and state resources. In the first place, EPA simply does not have the staff or the resources to implement the broad array of environmental requirements on its own. Secondly, direct management of individual state programs by EPA undercuts the agency's objective of having the states operate as the main implementers of environmental protection laws.

EPA Will Likely Continue to Rely on States to Implement Environmental Laws

The pattern of delegating responsibilities to the states is likely to continue, given the number of environmental statutes enacted in the 1980s that provide a key role for the states. In fact, the Congress expanded the states' role when it directly assigned major responsibilities to the states in some recent environmental legislation. The Safe Drinking Water Act of 1986, for example, requires states to establish programs to protect areas around drinking water wells. The act assigns this responsibility directly to the states rather than providing for its delegation by EPA.

Additional environmental responsibilities, however, have been accompanied by growing financial pressures in many states. More than ever before, environmental protection must compete with other issues (such as corrections, medical assistance, and education) for scarce resources. Furthermore, the federal government's relative contribution to many states' environmental budgets has declined.

Largely because of these financial pressures, a growing number of states have expressed reluctance in recent years to assume additional responsibilities for environmental programs. This has been particularly true when federal legislation has required states to perform program activities—such as meeting new federal standards for drinking water and wastewater—without providing federal funds to pay for them. Heightened concerns over these and other "unfunded mandates" spawned a variety of proposals in the 103rd Congress to discourage or even prohibit their enactment, and the passage of such legislation continues to be a major focus of attention in the 104th Congress.

Previous GAO Reports Identified Difficulties

Despite the importance of a good EPA/state relationship, difficulties have characterized the relationship over the years. For example, in 1980 we

reported on a survey of 267 state program managers in 50 states that assessed the states' perspective on their relationship with EPA.[1] This report identified the major obstacles states said they faced when implementing programs under five federal environmental laws—the Clean Air Act; the Clean Water Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; and the Safe Drinking Water Act. According to the report, inflexible regulations and excessive EPA control over state programs were two of the most frequently cited problems impeding program management. We recommended that EPA establish procedures to ensure early state input into important decisions having an impact on state implementation and that EPA establish joint state/federal committees for each program to advise the Administrator on implementation issues.

Our 1988 general management review of EPA concluded that while EPA's reliance on the states for program management was increasing, many state concerns closely paralleled those we noted in our 1980 report.[2] In particular, states said they wanted the flexibility to tailor programs to meet local needs, opportunities to participate in decisions affecting implementation, and EPA's trust in their ability to make day-to-day program decisions. The report acknowledged that EPA had been working to improve its relationship with the states but concluded that additional efforts were needed to establish an effective EPA/state partnership. Among other things, the report recommended basing the agency's evaluations of state programs on the extent to which states obtain improvement in environmental quality.

Objectives, Scope, and Methodology

Citing concerns about whether environmental laws are being applied consistently from one state to another, the Ranking Minority Member, Senate Committee on Governmental Affairs, asked us to examine a number of issues affecting the current EPA/state relationship. As agreed in subsequent discussions with the Ranking Minority Member's office, we examined

- whether EPA and the states have had difficulty implementing federal environmental requirements,
- to the extent that they have had difficulty, why the difficulty has occurred, and

[1]Federal-State Environmental Programs—The State Perspective (GAO/CED-80-106, Aug. 22, 1980).

[2]Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988).

- how they can improve their ability to carry out the requirements.

In particular, the Ranking Minority Member's office expressed interest in whether there are inconsistencies in the management of delegated environmental programs from one region to another and from one state to another and how these inconsistencies may affect the states' implementation of environmental programs and the overall EPA/state relationship.

As agreed with the Ranking Minority Member's office, we focused our review on three programs—the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act, subtitle C (hazardous waste) of RCRA, and the Public Water Supply Supervision Program of SDWA. We performed our fieldwork at EPA headquarters in Washington, D.C., and at EPA regional offices in Philadelphia (Region III), Chicago (Region V), and Dallas (Region VI). We also visited state officials in Virginia, Indiana, and Texas. We contacted representatives of environmental and public interest groups, such as the Environmental Law Institute and the Association of State Drinking Water Administrators. Finally, we contacted business and industry groups, such as the Chemical Manufacturers Association and others.

To address the first objective, we interviewed and obtained data from officials responsible for the oversight of state programs in EPA headquarters and regional offices. Specifically, we reviewed EPA's fiscal year 1994 performance evaluations of each state program in the 16 states located in the three regions covered by our analysis. Also, we reviewed pertinent EPA regulations, guidance, and other relevant documents, as well as guidance for implementing the pollution discharge, hazardous waste, and safe drinking water programs. We also discussed with EPA and state officials the extent to which federal mandates have been accomplished. Finally, we reviewed prior GAO reports and EPA documents that evaluated the states' ability to meet EPA program requirements.

We addressed the second objective in two steps. In step one, we mailed questionnaires to the states to elicit information from them on why environmental mandates may have been difficult to implement. To better determine the extent to which the EPA/state relationship may have changed over time, we sought to make this step as comparable as possible to our 1980 review of the EPA/state relationship.[3] Consequently, we used the same questionnaire as we used in 1980, and we mailed questionnaires to the 44

[3]Federal-State Environmental Programs—The State Perspective (GAO/CED-80-106, Aug. 22, 1980).

managers of authorized state programs in our 16-state sample.[4] One state program manager did not return the questionnaire, so our total number of respondents in step one was 43. Although the samples from the two studies are different and therefore not directly comparable, using the same instrument and surveying only authorized state program managers enabled us to make inferences about how the states' perspectives may have changed over the past 13 years.[5]

In step two, to follow up on the written responses from step one, we conducted extensive telephone interviews with 47 of the 48 state program managers in our sample.[6] We included state programs that have not yet been authorized in step two because we determined that these programs (1) were seeking authorization, (2) were already performing many program tasks for EPA regional offices, and (3) could comment on how EPA implements programs in unauthorized states. We also interviewed EPA officials and representatives of interest groups, such as the Chemical Manufacturers Association and the Association of State and Interstate Water Pollution Control Administrators. In so doing, we focused on the overall EPA/state relationship and on the issues that precluded the most efficient and effective use of federal and state resources.

We reviewed the results of several analyses conducted by EPA, such as The Costs of a Clean Environment and Strengthening Environmental Management in the United States; previous GAO reports; and other studies, such as State Costs of Implementing the 1986 Safe Drinking Water Act Amendments, to obtain information on the financial and program impacts of recent federal legislation on state programs. In addition, we considered the potential effects of several bills to reauthorize the Clean Water Act and SDWA. We also interviewed industry and trade association representatives, as well as EPA headquarters and regional officials, about this issue.

To some extent, the answer to our third objective, how EPA and the states can improve their ability to carry out their environmental responsibilities, was derived from the data and information gathered to respond to the previous two objectives. However, we also sought direct comment on this issue from state and EPA program managers, as well as from the executive director of a state agency, EPA deputy regional administrators, and the

[4]The 1980 survey included only authorized states. Four states in our 1993 sample—Louisiana, New Mexico, Oklahoma, and Texas—are not authorized to implement the NPDES program; consequently, we did not mail questionnaires to the managers of the NPDES programs in these states.

[5]The 1980 review covered 5 programs and 50 states.

[6]Our review included 3 programs and 16 states, for a total of 48 program managers. One program manager declined to be interviewed for this review.

deputy directors of EPA program offices. In addition, national organizations, such as the Association of State and Interstate Water Pollution Control Administrators and the Association of State Drinking Water Administrators, provided valuable insights.

We conducted our work between February 1993 and February 1995 in accordance with generally accepted government auditing standards.

States Have Experienced Difficulty in Implementing Federal Environmental Requirements

Despite decades of effort and the expenditure of billions of dollars by both the federal and state governments, many important environmental program requirements remain unmet. In some cases, states are less able to meet requirements now than in the past. Moreover, states have become increasingly reluctant to accept new requirements, and EPA seems unable to step in when states falter.

States Have Had Trouble Meeting Minimum Requirements for Environmental Programs

In recent years, each of the 16 states included in our evaluation has had difficulty performing some high-priority tasks in the federal environmental programs we reviewed. For example, under the NPDES program, significant backlogs of expired permits and permit applications have accumulated in some of these states. In addition, sanitary surveys of drinking water systems—preventive activities that many consider to be the backbone of their efforts to protect drinking water under SDWA—have had to be curtailed in some states. States have also had difficulty implementing the portion of the RCRA program that applies to boilers and industrial furnaces (high-profile emitters of hazardous air pollutants). State and federal officials agree that not meeting these and other program goals can adversely affect the environment and public health.

Clean Water Act's NPDES Program

Under the Clean Water Act, the NPDES program limits the discharge of pollutants into U. S. waters. Under the program, permits establish discharge limits for specific pollutants. These limits may be based on either (1) technology, reflecting a level of treatment that can be achieved with a given technology, or (2) water quality, reflecting a level of control needed to meet standards of quality for a particular body of water. The permits also require facility operators to submit to their regulating agencies monitoring reports that list the types and amounts of pollutants actually discharged at specified monitoring points. Forty states have primary responsibility for implementing the program and therefore perform such functions as issuing permits to facilities, monitoring compliance, and taking enforcement action when necessary. EPA implements the program in the remaining states.

Our evaluations of the NPDES program over the past 12 years have identified a consistent pattern of problems across a wide range of program responsibilities. In a 1983 report on the program, we estimated that over 80 percent of the 531 major dischargers in six states exceeded their permit

discharge limits at least once during an 18-month period.[1] We reported a consistent result 8 years later in testimony before the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, noting that 84 percent of the 583 major dischargers in the Great Lakes basin exceeded their monthly average limits at least once during the 18-month period from October 1989 to March 1991. More importantly, at the end of 1990, 19 percent of the Great Lakes dischargers were in "significant noncompliance" with permit conditions.[2] We concluded, among other things, that (1) NPDES permits allowed significant discharges of some pollutants and (2) enforcement against violators had been weak and sporadic.

In preparing this report, we found that states are still having difficulty meeting minimum NPDES requirements for important program activities, such as monitoring water quality and issuing permits. For example, state and federal NPDES officials we interviewed said that they consider issuing permits a critical feature of the NPDES program's framework, noting that timely issuance helps encourage economic development while simultaneously maintaining water quality standards. However, these officials said that issuing new permits and renewing existing ones had been difficult. We found that four of the five states in Region III and four of the six states in Region V had experienced such difficulties.[3] In Michigan, for instance, officials said that 65 percent of the major facilities were operating with expired permits while another 150 facilities were awaiting permits.

SDWA's Drinking Water Program

To protect the public from the risks of contaminated drinking water, the Congress enacted SDWA in 1974. This act requires EPA, among other things, to establish (1) maximum contaminant levels or treatment techniques for contaminants that could adversely affect human health and (2) requirements for monitoring the quality of drinking water supplies and ensuring the proper operation and maintenance of public water systems. All states but Wyoming have the responsibility, or "primacy," for managing

[1]Wastewater Dischargers Are Not Complying With EPA Pollution Control Permits (GAO/RCED-84-53, Dec. 2, 1983). The estimates in this report were based on a review of randomly selected major dischargers in six states.

[2]According to EPA criteria, a facility is in significant noncompliance with discharge limits when it either exceeds its monthly average permit limit (1) twice in any 6-month period by 40 percent for conventional pollutants or by 20 percent for toxic pollutants or (2) four times in any amount in any 6-month period. A facility that fails to provide any monthly discharge report is also classified by EPA as being in significant noncompliance.

[3]Arkansas, the only authorized state in Region VI, did not report any significant problems in issuing NPDES permits. NPDES officials in Minnesota declined our request for an interview to collect these data.

their drinking water programs. These states receive grants from EPA to help pay for the oversight of water systems and for other program responsibilities.

As we have reported frequently in the past, states have long had difficulty implementing fundamental requirements of EPA's drinking water program.[4] The problem was compounded dramatically, however, with the enactment of the 1986 SDWA amendments, whose requirements are estimated to have added about $2.5 billion in annual compliance costs. We noted in a 1993 report that some state programs might have deteriorated to the point that they could no longer support a credible drinking water program.[5] These programs had difficulty taking enforcement action against systems in violation of drinking water regulations, implementing new regulations, and performing sanitary surveys.

As a result of these and other problems, EPA has taken the highly unusual step of initiating proceedings to withdraw primacy from programs in eight states—Alaska, California, Colorado, Hawaii, Kansas, Maine, South Dakota, and Washington. As of December 1994, no state programs had ultimately lost primacy, but the EPA actions dramatically illustrated the difficulty many states have in implementing even the most basic elements of an effective drinking water program.

Our interviews with state drinking water officials confirm that states continue to experience problems meeting basic program requirements. Officials in 15 of 16 states we reviewed have either curtailed or eliminated important activities, such as adopting key EPA drinking water regulations and conducting vital monitoring activities. One key program element often cited as being curtailed is the state sanitary survey program. Sanitary surveys involve periodic visits by state inspectors to water systems, during which inspectors may test water quality, observe operator procedures, and/or assess the condition of equipment. State officials noted that they have had to reduce these and other quality assurance activities even though the activities are among the most effective and cost-efficient tools that states can use to help ensure compliance and correct problems before the problems become serious.

[4]See Drinking Water: Compliance Problems Undermine EPA Program as New Challenges Emerge (GAO/RCED-90-127, June 8, 1990); Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991); and Drinking Water: Widening Gap Between Needs and Available Resources Threatens Vital EPA Program (GAO/RCED-92-184, July 6, 1992).

[5]Drinking Water Program: States Face Increased Difficulties in Meeting Basic Requirements (GAO/RCED-93-144, June 25, 1993).

RCRA's Hazardous Waste Program

The RCRA hazardous waste, or subtitle C, program regulates the generation, transportation, and management of hazardous waste. The "base" program includes standards for managing and tracking hazardous waste from its generation to its ultimate disposal, as well as issuing permits to regulated facilities and periodically inspecting the facilities for compliance. Significant additions to the RCRA base program include (1) "corrective action," which involves the oversight of facilities' efforts to monitor for and clean up releases of hazardous waste into the environment and (2) the boilers and industrial furnaces (BIF) rule, which regulates the burning of hazardous waste. Currently, 46 states are authorized to implement the base program, while 19 are authorized for the corrective action program.[6] As of October 1994, seven states had been authorized to implement the BIF program.

Just as states in our review have had problems meeting their responsibilities under the pollution discharge and the drinking water programs, so they have also had trouble meeting one or more RCRA targets for issuing permits, inspecting facilities, and enforcing compliance. Overall, state RCRA managers report that their respective staff are stretched too thinly to adequately implement many important parts of the RCRA program. For example, inspections at RCRA facilities are a key means of ensuring facilities' compliance and thereby preventing releases of hazardous waste into the environment. However, states from all three of the regions we contacted reported that they had either been unable to complete or had difficulty completing inspections in recent years. For example, the Louisiana RCRA program had difficulty meeting some of its fiscal year 1994 inspection commitments; specifically, the state completed only three of seven scheduled inspections at commercial disposal sites. Similarly, as of July 1994, Arkansas had completed 17 of 29 compliance monitoring inspections targeted for completion by midyear.

We found that states are also having difficulty meeting the established criteria for timely enforcement, even for high-priority RCRA violations. For example, Region V determined that Wisconsin has 17 high-priority violations that have not been addressed with a formal enforcement action as required by EPA's Enforcement Response Policy.[7] Sixteen of Wisconsin's violations are older than the 135-day limit set by this policy.

[6]Twenty-four other states have adopted corrective action regulations but have not yet been formally delegated authority to implement the program.

[7]This policy includes guidance on classifying violations, selecting the appropriate enforcement action, and taking federal enforcement action in states with authorized programs. The policy stresses the importance of concentrating efforts on the most serious violations and taking timely and aggressive enforcement actions.

States Are Increasingly Unwilling or Unable to Accept More Program Responsibilities

Given their difficulties in implementing current requirements, many states are reluctant to accept new program responsibilities. For example, drinking water program managers from 13 of the 16 states that we contacted noted that if they were to implement any additional requirements without increases in federal funding, they would have to curtail key activities, such as sanitary surveys. Thirteen of the 16 state RCRA program managers and 13 of the 15 state NPDES program managers we interviewed also expressed concerns about being able to meet new program requirements because of funding limits.[8] Specifically, drinking water managers in 12 of the 16 states we contacted told us they were ill equipped to assume primacy for the phase II/V drinking water regulations and/or the lead and copper rule.[9] In addition, 9 of the 12 states we reviewed that have primacy for the NPDES base program are reluctant to accept responsibility for its new components or for the related stormwater, pretreatment, and municipal sludge management programs.

Many states have also been slow to adopt and implement RCRA's corrective action program. The corrective action program is EPA's effort to require and oversee cleanup efforts at leaking hazardous waste facilities. Some states fear that, in addition to requiring enormous resources, authorization for corrective action might lead to fewer resources for preventive measures.

EPA's Ability to Implement Programs Directly Is Limited

Under the Clean Water Act, SDWA, and RCRA, EPA is required to take over state programs, assuming responsibility for their day-to-day program operations, if it determines that states are not meeting statutory goals for issuing permits or taking enforcement actions. In addition, EPA is required by law to implement a program in states that have never assumed responsibility for programs in the first place. In practice, however, EPA has not withdrawn primacy from any state. In addition, according to EPA officials, the agency would not have been able to meet its own performance criteria in the states where withdrawal of primacy seemed warranted.

[8]One of the 16 state NPDES managers included in our sample declined to be interviewed for this review.

[9]The phase II/V drinking water regulations set standards for more than 60 contaminants, including pesticides, volatile organic compounds, and inorganic chemicals. The lead and copper rule, among other things, develops corrosion control treatment requirements to minimize lead and copper deposits from plumbing materials, such as lead pipes and solder.

EPA Is Not Prepared to Take Over Primacy for Deficient State Programs

When EPA determines that a state's program has deteriorated to the point that the state can no longer implement minimum program requirements, EPA is required by law to take over the program, although the agency states that it could still rely on state personnel to carry out some of the work. However, EPA officials in the NPDES, SDWA, and RCRA programs in all three regions we visited said that under such circumstances they would not have the resources to implement more than a "bare bones" program.

For example, state funding for the Indiana NPDES and RCRA programs was significantly reduced during 1993. Region V and Indiana officials agreed that without additional state funding, Indiana would have to return primacy to Region V. Under these circumstances, Region V officials said that federal implementation would concentrate on enforcement and that a full-scale program for issuing permits or providing technical assistance would not be possible. In addition, according to Region V NPDES and RCRA enforcement officials, enforcement activities in other states would have to be decreased to implement enforcement in Indiana. Ultimately, Indiana did provide the funding necessary to retain authorization for both programs.

Likewise, the Office of Groundwater and Drinking Water's 1993 contingency plan for EPA's direct implementation of state drinking water programs notes that EPA's program would be heavily weighted toward enforcement and data management and would provide little or no technical assistance for water systems. EPA's plan places the full burden of understanding and complying with program requirements on water systems, noting that more direct EPA involvement in assisting these systems would have to come at the expense of other critical needs.

EPA formulated the plan because it had started proceedings to withdraw primacy from Washington State for failure to adopt the surface water treatment rule and from Maine for not having adequate resources to run the program. Washington has since adopted the surface water treatment rule and has retained authority for the program. Maine has recently approved a fee program, which, according to an EPA Region I official, should provide the state with the minimum number of staff necessary to implement the program and retain the state's authorization status.

Although the immediate problem involving each of these states has been resolved, it is unclear whether EPA has the resources to follow through with primacy withdrawal. As we noted in a June 1993 report, EPA readily acknowledged that it could not administer all key elements of a drinking water program in more than a few small states. We concluded that, given

EPA's own staffing problems, rescission of primacy from only one or two small state programs would severely tax the agency's resources.[10]

EPA's Ability to Implement Programs in Nondelegated States Is Limited

EPA also has limited ability to implement programs in states that were never delegated primacy. For example, because Arkansas is the only state authorized to implement the NPDES program in Region VI, EPA implements the program for all other states in the region. However, according to Region VI NPDES officials, Region VI does not have adequate resources to, among other things, issue permits to all facilities or renew expired permits in these states. As a result, more than 5,000 facilities are operating without permits or with expired permits.

Region VI NPDES officials face similar problems implementing the NPDES sludge management program. This program's regulations have added about 2,000 facilities to the region's regulated universe. Region VI officials are particularly concerned about their ability to adequately enforce the regulations, noting that the resources needed to do so would inevitably be drawn from efforts to take enforcement actions against violators of other NPDES regulations.

Conclusions

States have long experienced problems in implementing their environmental programs, but these problems have worsened in many states as the programs have grown in cost and complexity. In light of these difficulties, states have become increasingly reluctant to take on additional responsibilities, either for new programs or for additional elements of existing ones. This reluctance has profound implications for the ability of EPA to fulfill its responsibilities because the agency would need to divert its own limited staff and funds to administer programs not conducted by the states themselves.

These challenges will be difficult to overcome under the best of circumstances but will be more difficult to achieve unless EPA and the states each assume their share of the burden and work together cooperatively. As the next chapters demonstrate, however, doing so requires addressing the problems underlying both the states' ability to comply with environmental program requirements and the states' relationship with EPA regulators.

[10]Drinking Water Program: States Face Increased Difficulties in Meeting Basic Requirements (GAO/RCED-93-144; June 25, 1993), p. 9.

Difficulties in Resolving Serious Resource Shortages Are a Primary Barrier to an Improved EPA/State Relationship

While EPA has ultimate responsibility for overseeing the delivery of national environmental programs, state and local governments are expected to assume primary responsibility for the day-to-day implementation of these programs. However, many states are unable to meet current targets for federal environmental programs and have become increasingly reluctant to accept new responsibilities. Although a number of factors explain the difficulties that have affected state environmental programs, the disparity between program needs and available resources clearly lies at the heart of the problem. Moreover, this resource gap is likely to widen further as new requirements take effect. As resources have grown tighter for EPA and the states, disagreements over program priorities and approaches have become increasingly frequent.

In recent years, EPA has tried to help states generate additional program funds and to target these funds toward the most serious environmental problems. The agency has, however, met with only limited success—although some programs have made greater strides in this direction than others. Ultimately, any effective solution to the problem will require congressional attention, since environmental statutory requirements are the central determinants of program costs.

Resource Shortages Have Become an Increasingly Serious Problem for State Environmental Programs

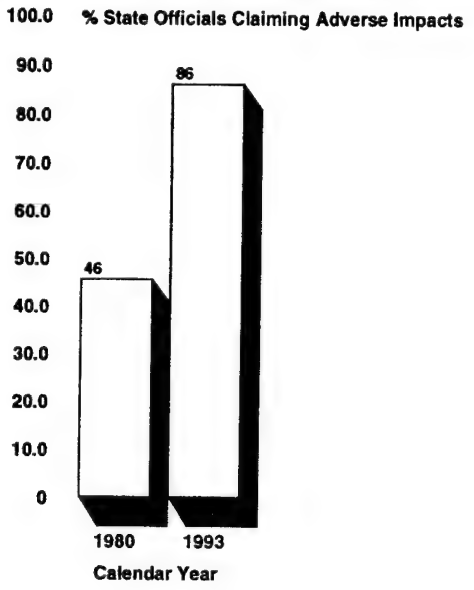
The costs of implementing the growing number of environmental requirements mandated by the Congress are overwhelming the budgets of many state governments. In 1990, EPA projected that, by the year 2000, state governments would have to spend an extra $1.2 billion annually, or approximately 46 percent more than they did in 1986, just to maintain present levels of environmental protection.[1] Similarly, pressures on EPA's budget have grown over the years as the agency's responsibilities have increased.

Overall, the EPA and state officials we contacted said that insufficient funding is the primary problem impeding implementation of federal environmental programs. Moreover, a comparison of our findings on this issue in 1980 and 1993 suggests that state officials' concerns over resource shortages have increased sharply. Specifically, as figure 3.1 illustrates, 46 percent of the 267 state managers who responded to our 1980 questionnaire said that an inadequate level of federal funding adversely affected their programs to a "great" or "very great" extent, while

[1]Environmental Investments: The Cost of a Clean Environment, U.S. Environmental Protection Agency, EPA-230-11-90-084 (1990). In this document, all cost estimates are in 1986 dollars and the present level of environmental program implementation is assumed to be the level that existed in 1987. These costs are annualized at 3 percent.

86 percent of the 43 state managers who responded to our 1993 questionnaire expressed this view.[2]

Figure 3.1: Changes in State Concerns About EPA Funding



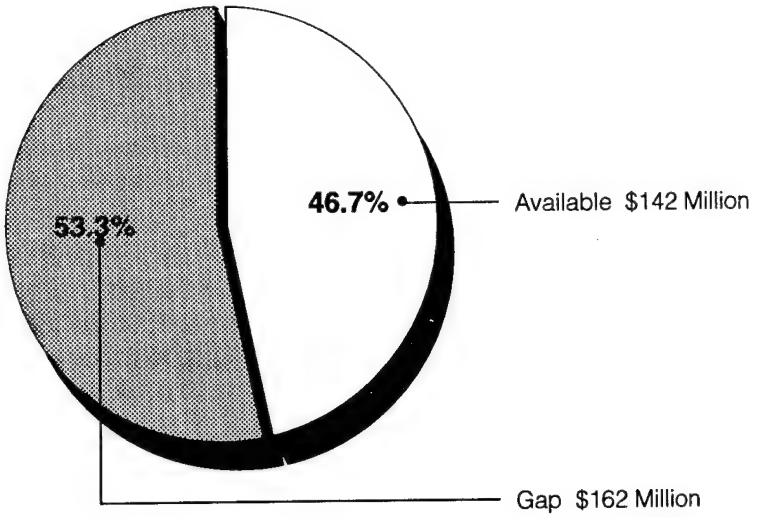
Note: The 1980 data are based on our survey of 267 program managers in 50 states, while the 1993 data are based on responses to our questionnaire by 43 program managers in 16 states.

There is substantial evidence of a gap between resource needs and available resources in EPA's drinking water program. For example, as shown in figure 3.2, EPA estimated that the states needed $304 million in 1993 for the program, yet only $142 million was available from state and federal sources, leaving a shortfall of approximately $162 million. Several reports recently issued by GAO and EPA indicate that staffing and financial resource constraints are seriously affecting the states' implementation of

[2]As we noted in ch. 1, the 1980 survey was based on five programs and 50 states, while the 1993 survey was based on three programs and 16 states. Yet despite these differences, we believe the results are useful in inferring the extent to which the states' perspectives on this issue may have changed during the past 13 years.

the program.[3] Indeed, as noted in chapter 2, as of December 1994, eight state programs were so deficient that EPA had initiated formal action to withdraw primacy. According to EPA, a wide variety of deficiencies were found in the states' programs, but a common thread was a lack of adequate resources.

Figure 3.2: Resource Gap for Drinking Water Program, Fiscal Year 1993



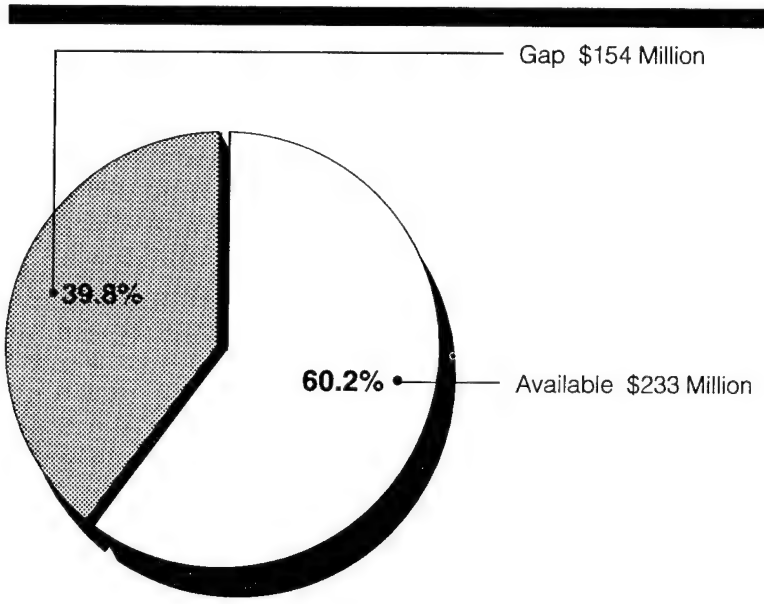
Note: States' funding needs total $304 million. The federal share of the available $142 million is $59 million (42 percent).

Source: GAO's presentation of data from EPA's 1993 study entitled Technical and Economic Capacity of States and Public Water Systems to Implement Drinking Water Regulations: Report to Congress.

[3]The following GAO reports indicate that staffing and financial resource constraints are seriously affecting the implementation of state drinking water programs: Drinking Water: Widening Gap Between Needs and Available Resources Threatens Vital EPA Program, (GAO/RCED-92-184, July 6, 1992); Drinking Water: Key Quality Assurance Program Is Flawed and Underfunded, (GAO/RCED-93-97, Apr. 9, 1993); and Drinking Water: Combination of Strategies Needed to Bring Program Costs in Line With Resources, (GAO/T-RCED-94-152, Mar. 14, 1994). The following EPA documents have similar findings: Technical and Economic Capacity of States and Public Water Systems to Implement Drinking Water Regulations: Report to the Congress, EPA, Office of Water (810-R-93-001, Sept. 1993) and Safe Drinking Water Act Reauthorization Overview, EPA, Office of Water (Jan. 1994.)

A resource gap is also apparent in the NPDES program. According to a December 1993 EPA study on the costs to states of implementing the Clean Water Act, state programs would need significant increases in funding to implement the act's current requirements, particularly to issue permits and enforce compliance to the extent required.[4] As figure 3.3 shows, this report estimated that state programs would need $387 million to fund current requirements in fiscal year 1995 but that they would receive approximately $233 million, leaving a resource gap of $154 million. The report also estimated that states would continue to experience average annual funding shortfalls of $166 million through fiscal year 2004.

Figure 3.3: Resource Gap for NPDES Program, Fiscal Year 1995



Note: States' funding needs total $387 million.

Source: GAO's presentation of data from EPA's 1993 study entitled State Program Costs for Implementing the Federal Clean Water Act.

[4]State Program Costs for Implementing the Federal Clean Water Act, EPA, Office of Water (Dec. 6, 1993). The costs that we cite from this report are defined as those needed to fully implement the 1987 Clean Water Act requirements. All costs in this report are presented in constant fiscal year 1995 dollars.

State NPDES officials we interviewed said that resource shortages were having adverse effects on their programs. For example, the director of Wisconsin's Bureau of Wastewater Management said that in fiscal year 1994, the state needed almost a 75-percent increase in staff to run a credible program. The director maintained that the additional resources were needed to inspect high-priority facilities, some of which are now inspected only once every 5 years, and to provide technical assistance to small facilities. Ohio officials told us that they experienced a $4 million resource shortfall in fiscal year 1994. According to these state managers, the state's ability to monitor water quality and issue permits suffered as a result of the gap.

EPA has not collected comprehensive data on the needs of state RCRA programs and on the state and federal resources available to meet these needs as it has for the drinking water and NPDES programs. However, we have previously reported evidence of a resource gap for RCRA. For example, we estimated shortfalls of $38 million and $28.5 million in the corrective action program for fiscal years 1992 and 1993, respectively.[5]

State RCRA officials whom we contacted also said that resource shortages were having negative effects on their programs. For example, Wisconsin officials said that although the state's fiscal year 1994 RCRA budget was $2 million, the state needed approximately $4.5 million to run a full base program. As a result, these officials said, many aspects of the RCRA base program were underfunded. Similarly, Illinois officials reported that their fiscal year 1994 program was "grossly underfunded" and that the corrective action program was particularly costly. In fact, according to these officials, some base program activities have had to be curtailed in order to implement corrective action requirements.

Growing Costs and Prescriptions on Spending Limit State Programs

In recent years, as environmental laws have grown in both scope and complexity, states have been faced with a widening gap between the costs of environmental protection and the resources available to pay for them. State and EPA officials agree that the states' capacity to absorb these costs is limited.

The problem has sometimes been compounded, however, by prescriptive federal requirements that limit the ability of state program managers to focus on the highest-priority problems within their programs. EPA and the

[5]Hazardous Waste: Much Work Remains to Accelerate Facility Cleanups, (GAO/RCED-93-15, Jan. 19, 1993).

states are also limited by law in their ability to allocate funds across environmental programs to address states' most pressing environmental problems.

Funding Has Not Kept Pace With Responsibilities and Costs

As we reported in June 1991, in environmental protection, as in other areas, the federal government has been shifting to state and local governments the authority and responsibility not only for implementing but also for financing major programs. New federal standards for drinking water, solid waste disposal, and wastewater treatment, among others, will require state and local governments to find additional funds to finance needed improvements and to administer and carry out programs.[6]

State and trade association officials we contacted expressed growing concern about the cumulative costs of what have become commonly termed "unfunded federal mandates"—programs or requirements that are imposed on states by the federal government but are not accompanied by funding to implement them. For example, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) has estimated that, upon passage of the 1987 amendments to the Clean Water Act, the states' workload to comply with the act more than doubled while, at the same time, federal funding to states for implementing the act decreased. In total, ASIWPCA claims to have documented more than $215 million in what the association considers "unfunded mandates" in the 1987 bill alone. According to ASIWPCA, the most significant unmet needs and the mandates most frequently cited by states include ambient monitoring and issuing permits for minor point sources.[7]

In elaborating on this concern, state program officials noted that because federal funding has remained flat in recent years while program requirements have increased, the state share of program costs has increased dramatically. For example, according to Arkansas NPDES officials, the need to fund the implementation of new municipal sludge requirements imposed by the 1987 Clean Water Act amendments, together with the need to fund the implementation of current requirements, caused Arkansas to increase its use of water fees between fiscal year 1989 and fiscal year 1994 by about 237 percent.

[6]Environmental Protection: Meeting Public Expectations With Limited Resources, (GAO/RCED-91-97, June 18, 1991).

[7]Ambient water quality monitoring refers to the monitoring of surface waters for pollutants and specific chemicals that could affect human health and aquatic life. Point sources of pollution are those that involve a single, specific point source, such as a wastewater treatment facility or a factory.

Resource Shortages Have Led States to Defer Program Activities

We have reported recently on the effects of shifting the costs of implementing federally mandated programs and requirements to the states. For example, in March 1994, we testified that states often defer or eliminate important elements of their drinking water programs in order to devote resources to developing and implementing a growing list of regulations.[8] Many of the activities that have suffered the most—such as technical assistance, operator training and certification, and wellhead protection—have the greatest potential to avert contamination and to reduce water systems' long-term compliance costs.

The results of our interviews with state program managers are consistent with these findings. Eighty-four percent of the state officials we interviewed said that resource shortages significantly hamper their ability to meet environmental program requirements. For example, 12 drinking water officials from 16 states noted that they were spending more resources on developing new programs and regulations, as required by the 1986 SDWA amendments, than on conducting vital water system inspections (sanitary surveys) or compliance reviews. These managers expressed concern that, as a result, compliance rates as well as water quality could be suffering. State managers in the NPDES and RCRA programs voiced similar concerns. EPA regional officials concurred that to the extent additional unfunded requirements result in resource shortages for states, they can have unfavorable consequences for state programs.

Legislation Has Been Introduced to Help Address Resource Shortages

States' frustration with unfunded mandates triggered the introduction of several bills in the 103rd session of Congress, ranging from "no money, no mandates" measures to more modest provisions that would require the Congress to report the cost of its actions. Although none of these bills was enacted into law during the 103rd session, passage of legislation on unfunded mandates continues to be a major issue in the 104th Congress. For example, S. 1 and H.R. 5, introduced in January 1995, seek to end the imposition, in the absence of full consideration by the Congress, of federal mandates without adequate funding. As of February 1995, Senate and House conferees were meeting to finalize a compromise bill on unfunded mandates.

To help address state resource shortages, EPA proposed amendments last year to environmental statutes being considered for reauthorization. Some of the proposed amendments were intended to provide more flexibility to help states implement environmental programs more cost-effectively. For

[8]Drinking Water: Combination of Strategies Needed to Bring Program Costs in Line With Resources (GAO/T-RCED-94-152, Mar. 14, 1994).

example, EPA proposed several amendments to SDWA, including an amendment to allow states with primacy to develop alternative monitoring and treatment approaches for public water systems that have adopted "enhanced" programs for protecting source water.[9] EPA has also suggested that similar amendments be made to the Clean Water Act.

Prescriptive Federal Requirements Can Limit the Ability of States to Focus on Their Highest Priorities

One of the greatest concerns expressed by states is the impact of resource shortages on their ability to address their own priorities within programs. According to state and trade association officials we contacted, prescriptive federal laws and regulations frequently exacerbate the resource shortage by limiting the funds available to deal with unique state priorities. This concern was raised by the Governor of Nebraska while testifying in March 1994 on behalf of the National Governors' Association before the Subcommittee on Investigations and Oversight, House Committee on Science, Space, and Technology. The governor said that

> "[unfunded] mandates can actually weaken state environmental programs by diverting resources from higher priority matters. They are often inefficient, requiring states and localities to implement procedures that are not the least costly method of accomplishing an objective."

Most of the state program officials we interviewed agreed: 72 percent noted that specific federal statutory and regulatory requirements often force them to spend state money on mandated federal activities that are less important to them than are state priorities. As state resource shortages grow, lack of flexibility for states to set and fund their own program priorities is becoming a more contentious issue in the EPA/state relationship.

Several officials gave examples of how federal mandates limited their flexibility in pursuing state priorities. For example, about 75 percent of the state RCRA managers we interviewed said that they would like to more frequently inspect facilities that generate hazardous waste, especially facilities that are considered "small-quantity generators" of this waste.[10] Officials from several states said that at the few small-quantity generators

[9]Under EPA's proposal, at a minimum, all states would be required to establish a baseline protection program that would include a delineation of drinking water protection areas, inventories of significant sources of contamination, vulnerability assessments, contingency plans, and local involvement. An optional enhanced source water protection program would contain stronger, enforceable prevention measures.

[10]Currently, EPA requires states to inspect major treatment, storage, and disposal facilities annually. Frequently, these inspections are done at the expense of other work, such as inspections of small-quantity generators.

that have been inspected, illegal dumping and handling of hazardous waste has been detected. As a result, these officials said that focusing resources on small-quantity generators could provide a higher environmental payoff than allocating comparable amounts to implement the federal RCRA requirement for annual inspections of major treatment, storage, and disposal facilities. However, according to these officials, after federally mandated RCRA priorities are implemented, there is little funding left to implement such state priorities.

EPA officials defended the current federally mandated activities as necessary to ensure adequate national protection but agreed that small-quantity generators also need attention. EPA officials added that addressing concerns about small-quantity generators could become a federal priority in the future, but new federal funding is unlikely to become available for that purpose.

Ninety-four percent of the state drinking water program officials we interviewed indicated that mandatory implementation of new program requirements within federally mandated time frames has caused fiscal stress in their state programs and has caused some state programs to discontinue or reduce activities they consider to be more environmentally significant. For example, to implement the lead and copper and Phase II/V rules within specified time frames, program officials from most of the states in our sample said they had to reduce the number of sanitary surveys conducted. Most of the state drinking water program officials we contacted consider sanitary surveys a high priority. This is consistent with our past findings showing that sanitary surveys and other quality assurance activities are central to any effort to improve compliance and better protect the public from contaminated drinking water.

EPA headquarters and regional staff we contacted were generally sympathetic to the states' perspective, noting that state resource shortages are real and that EPA experiences many of the same shortages. EPA officials explained, however, that the specificity of federal environmental laws often limits spending flexibility. They added that to ensure a base level of environmental protection nationwide, the agency must require certain activities to be carried out in each program in each state.

EPA Is Taking Steps to Help Address State Resource Shortages

EPA has taken some steps to help address resource shortages at the state level. These steps include helping the states to make greater use of alternative financing mechanisms, such as permit fees, revolving loan funds, and public-private partnerships. However, many states that use

these types of mechanisms are generating only a fraction of the funds needed. EPA has also examined ways to provide states with greater flexibility to better target their resources, and it proposed amendments during the reauthorization of several key environmental statutes last year that would have brought program responsibilities more in line with available resources. However, EPA's efforts to grant states additional flexibility have met with mixed success, and none of the relevant environmental statutes was reauthorized by the end of the 103rd Congress.

EPA Is Encouraging Greater Use of Alternative Financing Mechanisms

As we reported in June 1991, EPA's alternative financing initiative is designed to help state governments find sources of funds for environmental programs besides general appropriations or federal grants.[11] The agency has sought to encourage the use of alternative financing mechanisms through its Environmental Finance Program, which seeks to build and enhance the capacity of state and local governments to implement environmental programs though several activities.[12] For example, the program has led an effort to produce a compendium on alternative financing mechanisms, played the lead role in implementing the environmental finance component of EPA's State Capacity Implementation Plan, and developed an electronic multimedia environmental finance data base to provide state and local officials with information and case studies on funding methods.[13]

A 1989 study by the National Governors' Association found that alternative financing mechanisms have been an important source of revenue for state and local governments. State officials we surveyed also emphasized the growing importance of user fees in funding program implementation—especially in light of limited state revenues and stagnant federal grant funding. However, both surveys showed that these alternatives would not be sufficient to pay for implementing current federal environmental requirements. In addition, the State Capacity Task Force reported in 1992 that some states had expressed concern about a growing resistance to fee programs among industry groups and the general public. Because of public resistance in Maryland, for example, the state

[11]Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

[12]Environmental Finance Program staff work with members of the Environmental Financial Advisory Board, an independent advisory committee established under the Federal Advisory Committee Act. The Board has 33 members drawn from the public and private sectors. Board members represent federal, state, and local governments; national environmental organizations and trade associations; academia; banking and financial institutions; and businesses and industries.

[13]The State Capacity Implementation Plan is part of the State Capacity Task Force, discussed in ch. 4.

legislature recently defeated a proposal that would have increased NPDES user fees at an annual cost of 30 cents per resident.

EPA Is Seeking Ways to Give States More Administrative Flexibility

EPA has been exploring ways to help the states address their resource shortages by providing them with additional administrative flexibility. For example, in June 1992, EPA issued guidance to set short-term priorities for the drinking water program so that both EPA and the states could focus their limited resources on the highest priorities first while allowing the states time to build resources in order to fully implement the program after a period of up to 5 years. This approach has helped some states in implementing program responsibilities, but it has been of limited use to other states that have been unable to accomplish even their highest-priority items under the guidance. EPA has acknowledged that this guidance is, at best, only a partial solution to the underlying financial crisis affecting the drinking water program.

EPA has also tried to increase states' flexibility in using limited resources through its RCRA operating guidance. Beginning with the fiscal year 1992 RCRA Implementation Plan, the agency initiated a Strategic Management Framework for the RCRA hazardous waste program. This framework identifies priority themes for the RCRA program, and it gives states the flexibility to determine which specific activities are the most environmentally significant, as well as to decide how to balance the various aspects of the RCRA program.

EPA also plans to seek authority for fiscal year 1996 to fund several demonstration projects in an attempt to learn more about how flexible grants might help states better implement federal environmental programs. For example, North Dakota has proposed a multimedia block grant project that would combine categorical grants from 10 federal programs into a single block grant, which the state, within certain limits, would be authorized to allocate according to its needs.[14] EPA believes this approach may enable states to better coordinate programs as well as relieve some administrative burdens. According to EPA plans, block grant funds could be used only for costs incurred by the state in the conduct of these 10 programs, and the state would have to satisfy all substantive statutory and regulatory program requirements for each program funded under the proposed block grant. EPA also plans to fund similar, but more

[14]The 10 programs are air pollution control, indoor radon, toxic substances enforcement, water pollution control/groundwater, clean lakes, underground injection control, hazardous waste management, underground storage tanks, pollution prevention, and regional multimedia programs.

narrowly based, demonstration projects in Massachusetts and New Hampshire for fiscal year 1996.

Conclusions

While EPA and the states have taken some constructive steps to deal with the states' inability to meet the growing costs of environmental programs, the problem will likely remain a major impediment to environmental protection as well as an irritant in the EPA/state relationship. Our interviews with EPA and state program officials show that the agency's efforts to encourage the use of alternative financing mechanisms and to increase administrative flexibility have met with limited success. Consequently, it may be up to the Congress to address this issue, since the programs' costs and the states' inability to take advantage of the programs' greater flexibility are predominately a function of requirements contained in environmental legislation. The 103rd Congress's strong interest in the costs of environmental programs, reflected in the debates on reauthorizing the Clean Water Act, SDWA, and other environmental statutes, continue to be a major focus of attention during the 104th Congress.

Other Key Factors Impair States' Performance and the EPA/State Relationship

As noted in chapters 2 and 3, EPA and state program managers indicated that resource constraints are a major limitation in implementing federal environmental programs. A number of other factors, however, have also complicated the EPA/state relationship and made program management more difficult. These factors include (1) concerns over the appropriate balance between consistency and flexibility in EPA's oversight of state programs, (2) the perception that EPA micromanages state programs, (3) the need for more technical support from EPA to implement increasingly complex state program requirements, and (4) problems in communication between EPA and the states.

Over the years, EPA has tried to resolve concerns about its relationship with the states through task forces, formal policy statements, and program-specific efforts. Although progress has been achieved in some areas, many of the issues identified as impeding the EPA/state relationship in the past continue to be of concern today.

States Are Concerned About Inconsistency in EPA's Oversight

One frequently cited concern—specifically identified by the Ranking Minority Member, Senate Committee on Governmental Affairs, in requesting this review—is that disparities and inequities may exist in the way different EPA regions oversee the states within their jurisdiction or in the way a single region oversees the states within its jurisdiction. Those expressing this concern believe that disparate treatment has led to inconsistencies in the way states set standards, write permits, take enforcement actions, and perform other key functions. It has been argued that such inconsistencies may offer unfair economic advantages to some businesses and industries and may contribute to the belief held by some states that they have been singled out by EPA for unfair treatment.

Although we found many examples of what may be inconsistent oversight, it is difficult to determine the extent to which it is unfair or has negative consequences. Specifically, we found (1) some inconsistency that merely reflects the differences authorized by laws that allow EPA regions and states to tailor national requirements to local priorities and (2) some inconsistency that may be unwarranted and counterproductive. We also found a strong perception among state officials that such disparate treatment by EPA regions is commonplace. EPA officials acknowledge that the states believe such disparities are widespread and that the agency does not know whether such perceptions are well founded.

The Appropriate Level of Oversight May Vary

The enactment of national drinking water, water quality, and hazardous waste standards grew partly from a congressional determination that states varied greatly in their attention to environmental protection. Federal environmental protection programs were, in part, supposed to ensure that industries and states had a level playing field and that at least a minimum level of environmental protection was afforded from state to state. Given the existence of national standards and of requirements for states to meet them, it followed that EPA should ensure that the standards were implemented consistently from state to state and that the states should be treated consistently by EPA.

To help achieve national consistency, EPA provides regions and states with general policy direction as well as specific program criteria. For example, before authorizing states to administer a program, EPA requires them to have sufficient statutory authority and enforcement capability. EPA also requires states to follow its policy for taking timely and appropriate enforcement actions against violators. Similarly, EPA has procedures that all states must follow in reporting data. In addition, EPA managers at the headquarters and regional levels told us that they maintain frequent contact with the states, in large part to ensure consistent program implementation.

In some cases, however, differences in EPA's oversight and in states' implementation are authorized by statute and are used by regional and state managers to address state-specific problems, such as budgetary constraints. State and EPA officials also noted that rather than treating all states in exactly the same fashion, an EPA region may do better to focus greater oversight resources in a state that is performing poorly while spending fewer resources in states with stronger compliance histories.

Inconsistency in EPA's Treatment of States Is Sometimes Warranted

Many state officials and several EPA officials whom we interviewed agreed that some variation between EPA regions, and between states within regions, is needed so that the regions and states can tailor national program requirements to individual local circumstances. Factors cited included a state's geography, industrial profile, or ability to run a program. EPA's drinking water program illustrates this point. For example, a state can, under certain conditions, waive expensive monitoring requirements for a water system if the state determines that the contaminant in question will not pose a threat to the system's water supply. Wisconsin drinking

water officials reported savings of about $19.8 million from waiving requirements to monitor for synthetic and volatile organic compounds.[1]

The RCRA program also allows a measure of variation to better meet individual regional and state priorities. Under this program, regions and states can set their own compliance monitoring and enforcement activity levels on the basis of criteria and guidelines established in EPA's annual RCRA Implementation Plan. While the plan lists national consistency as a governing principle, it also calls for states to address facility-specific environmental priorities.

Inconsistency Can Be Counterproductive

Even though RCRA, SDWA, and the Clean Water Act allow inconsistency under certain circumstances, in some cases it may be counterproductive and may have detrimental effects on the EPA/state relationship. In our past and current work, we found that such problems can develop when regions (1) choose to deviate from formal national policies or regulations, (2) are unsure of program requirements, or (3) implement new program policies at widely varying rates.

We reported in our 1990 evaluation of EPA's drinking water program that, contrary to the agency's regulations, EPA's Region X office (Seattle) did not require its states to comply with certain reporting requirements.[2] Also contrary to EPA requirements, Region X allowed states to monitor for turbidity only 20 days per month, when the regulations required daily monitoring.[3] We concluded that Region X's approach undermined the integrity of the drinking water program. EPA agreed with our conclusion and took steps to better ensure compliance with national monitoring requirements.

Similarly, we reported inconsistencies in EPA regional offices' penalty assessment practices that resulted in the collection of insufficient penalties.[4] EPA requires regional enforcement officials to assess penalties that are at least as great as the amount by which a company would benefit

[1]These savings represent monitoring costs avoided from 1993 through 1995, not annual savings.

[2]Drinking Water: Compliance Problems Undermine EPA Program as New Challenges Emerge (GAO/RCED-90-127, June 8, 1990).

[3]High levels of turbidity, which is a "cloudiness" in water caused by minute suspended particles, may reduce the efficiency of disinfection treatment and mask the presence of microbiological contaminants. Turbidity requirements apply only to water systems that obtain their water from surface sources.

[4]Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991).

by not complying with the law. According to this policy, the final assessed penalty should include this minimum penalty—an economic benefit component—as well as a gravity component determined by the seriousness of the violation. We found, however, that some regional and state officials chose to deemphasize penalties in favor of negotiating with violators to obtain compliance. Such practices come at the expense of recovering penalties reflecting the economic benefit to violators. To hold regions more accountable for their penalty assessment practices, we recommended that EPA require regions to include information, such as the economic benefit and the gravity component, in the Office of Enforcement's existing penalty-reporting information system.[5]

In a May 1991 report on RCRA's corrective action program, we concluded that EPA's lack of a prioritization system created inconsistencies in regions' approaches to undertaking cleanups.[6] Because EPA did not develop national criteria or a method for ranking facilities by the seriousness of their problem, there was inconsistency in the way regions ranked facilities, in the criteria they chose for determining environmental threat, and in the weights they assigned to these criteria. As a result, the agency lacked assurance that the most serious problems would receive the highest priority. In response to our report, EPA established a process for ranking facilities, known as the National Corrective Action Priority Ranking System, which ranks facilities so that those posing the greatest environmental threat are cleaned up first.

According to some state and association officials interviewed, inconsistencies occur because some EPA regional offices are more aggressive than others in implementing the agency's policies. For example in the NPDES program, some state officials said that EPA's National Metals Policy was implemented unevenly across regions.[7] According to these officials, the metals policies were very controversial because some states argued that they were based on outdated science and resulted in standards for metals that were too strict. These officials said that some regions—such as Regions III and V—were more aggressive and pushed states to meet the requirements almost immediately. Anticipating that the

[5]EPA does not intend to act on this recommendation because the agency believes that it would require the collection of large amounts of data and the development of a data base that would be compatible in all states.

[6]Hazardous Waste: Limited Progress in Closing and Cleaning Up Contaminated Facilities (GAO/RCED-91-79, May 13, 1991).

[7]EPA's toxic metals policies include provisions for identifying and cleaning up impaired waters and implementing other key toxic pollution control requirements, including the adoption of numeric toxic discharge limits.

standards would be controversial, other regions—such as Region VI—took a "go slow" approach to implementing the policies, according to these officials. When states in Regions III and V tried to include the new standards in permits, numerous industrial facilities appealed. According to an EPA official from the Permits Division of the Office of Water Quality, EPA made revisions to the metals policy on October 1, 1993. This official said that if all states followed the revised policy, many inconsistencies between states would disappear.

Inconsistency Can Be Perceived as Well as Real

Seventy-two percent of the program managers we interviewed perceived that EPA's regional offices treat the states inconsistently and said that this practice raises questions of fairness or causes other problems. Of the state managers who believed that inconsistencies had occurred, almost all could describe, or had at least heard of, disparities between regions. However, some state managers conceded that they lacked complete information about how the programs are implemented in other states. These managers acknowledged that if such information were available, they might be better able to understand the reasons for the variation and perhaps feel less "singled out" by EPA.

Our examination of this issue indicates that misunderstandings can lead state program managers to believe that EPA regional offices unjustifiably give individual states disparate treatment. For example, one state manager we interviewed believed that California was inappropriately given an extension to require public water systems to begin monitoring for lead and copper under SDWA. Another state manager believed the same to be true for Texas. According to EPA regional drinking water officials, however, no such extensions were given.

EPA Is Trying to Find a Balance Between Flexibility and Consistency

Our interviews with state and EPA program managers suggest that, in responding to states' concerns over perceived inconsistencies in EPA's application of federal environmental requirements, EPA needs to determine whether an "inconsistency" (1) is merely the appropriate exercise of flexibility, (2) is inappropriate and raises genuine questions of fairness, or (3) is less a reality than a perception arising from miscommunication or lack of information. By attending to the latter two concerns, EPA could both improve environmental performance and address a significant irritant to the EPA/state relationship.

In some cases, EPA has demonstrated sensitivity to the need for striking a balance between flexibility and national consistency. For example, the RCRA Implementation Plan, developed with state input, tries to define national program goals and establish realistic priorities for these goals. The program's Beginning of Year Plan, also developed with state input, sets program activity targets that reflect both national and state-specific goals.

EPA's newly created Office of Enforcement and Compliance Assurance (OECA) has also begun to examine this question.[8] OECA officials have acknowledged that they are trying to determine the conditions under which consistency should be emphasized over state autonomy. They pointed out, for example, that while much of EPA's guidance is designed to achieve consistency, the agency has moved in recent years toward giving states greater autonomy.

Still, the OECA officials believe that EPA headquarters and regions may need formal mechanisms (such as memorandums of agreement between regions and states) to clarify how regions are to balance the desire for more flexibility to respond effectively to local circumstances with the need for consistency to achieve national expectations and goals. By openly recognizing the problem and systematically trying to deal with it EPA could help address this difficult and sensitive issue.

States Perceive EPA's Oversight as Excessive

The states' perception that EPA "micromanages" state programs is another long-standing issue in the EPA/state relationship, although about one-third of the state officials we interviewed expressed a belief that EPA's performance had improved in this area. For this review, we defined micromanagement as excessive control of state programs by EPA regional offices. Although EPA's policy on the agency's partnership with the states emphasizes mutual respect and trust, as well as sufficient flexibility to accommodate differing federal and state needs, many state managers continue to believe that the association more closely resembles a parent/child relationship than a true "partnership."

Perceptions of Micromanagement Have Declined Somewhat

About 32 percent of the state program managers interviewed described improved relationships with their EPA regional counterparts. For example, Illinois RCRA officials noted some site-specific disagreements but generally

[8]In 1994, EPA reorganized its enforcement functions, centralizing them in OECA.

believe their relationship with Region V is at an all-time high, with a good balance between constructive oversight and flexibility.

In response to states' concerns about micromanagement, EPA has modified its oversight of some programs. For example, Illinois RCRA managers characterized as "highly promising" a joint state/Region V effort to revamp the way oversight is conducted, including redefining the term itself, developing criteria to assess states' performance, and initiating a pilot program to allow states to evaluate their own performance. Four of the five state RCRA managers in Region V were encouraged by this joint effort, saying that they consider it a good effort on the part of the region to improve its oversight of the states. In the RCRA Corrective Action program, EPA has adopted a tiered oversight approach. Under this concept, EPA is tailoring its oversight to meet the needs of specific facilities, acknowledging the need to vary the level of oversight to better allocate the agency's limited resources. According to agency guidance, the level of oversight should depend on the extent to which a facility poses a risk to human health or the environment. Facilities having the greatest risk are to receive the closest oversight.

EPA is also considering similar modifications to its NPDES and SDWA programs. For example, the Region V NPDES Quality Action Team recently recommended that the region review only high-priority NPDES permits and that even these reviews be limited. The Region V NPDES Quality Action Team recommended reducing the number of NPDES permit reviews so that the region could devote more resources to, among other things, limiting the redundancy between the states and EPA, focusing reviews on established high priorities, and allowing EPA to become a more proactive member of the state/EPA permitting team.

According to EPA drinking water officials, the agency plans later this year to announce an initiative designed to, among other things, base program priorities on risk and to focus more on providing technical assistance and building the capacity of small water systems. One of the hallmarks of this initiative is its stated goal of "extensive consultation with stakeholders," that is, with states and water suppliers, in developing ways to achieve these objectives.

Micromanagement Is Still a Concern

While EPA has made some progress in allaying states' concerns about its micromanagement, the results of the questionnaire we mailed to authorized state program managers were consistent on this issue with the

results of past surveys that identified the issue as a state concern. In responding to our 1980 survey, for example, 60 percent of the program managers said that excessive EPA controls were a major obstacle to effective program management. In responding to our recent study, 63 percent of the program managers found the level of control that EPA exerts over the states a significant barrier to effective program implementation.

Almost all of the state officials we interviewed who found micromanagement a problem said that, despite the states' growing abilities to administer environmental programs, EPA routinely tries to second-guess state decisions and dictate program activities. These state officials explained that this lack of confidence in the states' abilities has gradually eroded the EPA/state relationship. For example, in 1991 EPA required Illinois to conduct extensive thermal studies of the upper Illinois River and the Des Plaines River systems and impose restrictions on the use of bromine products in the Commonwealth Edison's NPDES permit. EPA required these steps even though the state's monitoring data did not indicate a problem needing immediate attention and the state's 1991 program plan did not call for such efforts. Illinois officials viewed EPA's actions as an unwarranted intrusion into the state's program. EPA officials maintained that their analysis had determined that the combined effect of the thermal discharges from the Edison generating stations had resulted in violations of Illinois water quality standards for temperature and that the state's response was not protective enough.

Similarly, drinking water officials in Wisconsin expressed frustration with what they consider an inflexible EPA requirement that they monitor for radionuclides, even though their monitoring data show that these elements do not exist in Wisconsin drinking water.[9] According to the state officials, the resources spent on monitoring for these elements could better have been spent on preventive activities, such as sanitary surveys and wellhead protection programs. EPA drinking water officials stated that even if radionuclides have not been detected in Wisconsin's (or in any state's) drinking water, EPA regulations do not allow waivers from radionuclide monitoring. As a result, the regions must ensure that states monitor, regardless of the conditions indicated by the states' monitoring data. According to drinking water officials, in 1994 the agency proposed radionuclide regulations that would allow states to issue monitoring

[9]Radionuclides include radium 226 and radium 228, beta particles and photons, uranium, gross alpha particle activity, and radon. Adverse health effects from exposure to radionuclides include bone and lung cancer, leukemia, and kidney damage.

waivers (as they can now for other contaminants). As of December 1994, the proposal was still under consideration.

States and EPA Agree That Oversight Should Be More Constructive

Seventy-two percent of the state officials who responded to our questionnaire said that philosophical differences between them and EPA were major impediments to program implementation. Many state officials agreed that such philosophical differences often affect their respective views of program priorities and thus help determine the extent to which states believe they are being "micromanaged." For example, 88 percent of the state drinking water officials we interviewed said that they prefer to rely on technical assistance and preventive efforts, such as operator training and sanitary surveys, to keep water systems in compliance with program requirements. Several of these officials, however, noted that EPA's drinking water priorities differed significantly, focusing more on developing new regulations and pressing formal enforcement actions. States are more likely to believe that they are being micromanaged when they are required to implement a program in accordance with program priorities that differ significantly from their own.

Despite their opposing philosophical orientations, EPA and state officials agreed that EPA should be more constructive in its oversight, focusing on providing technical assistance, clarifying regulations, and performing the science necessary to support states' regulatory efforts. They further agreed that EPA should focus on achieving environmental results without prescribing in detail how these results are to be achieved. EPA's Joint Policy Statement, signed by the Administrator in July 1994, acknowledges these views. This statement identifies roles for EPA in carrying out its statutory mission, including "constructive program review, research, collection/analysis/sharing of information, and technical assistance." The statement also points out that among the "governing principles" for achieving an effective EPA/state relationship is a reliance on "result-based performance measures."

States Find That EPA's Technical Support Does Not Meet Their Needs

According to EPA, providing technical assistance to the states is a priority and an essential element of the EPA/state relationship. However, we found that the agency is sometimes hard pressed to follow through on its commitments in this area and that, as a result, some state programs are seriously disadvantaged. Responses to the questionnaire we mailed to state program managers showed, for example, that about 53 percent of the RCRA managers, 69 percent of the drinking water managers, and 58 percent

of the NPDES managers identified the time it takes EPA to answer technical questions as adversely affecting their programs "to a great extent" or "to a very great extent." State officials frequently cited the development of measurable environmental indicators as an area where technical assistance is needed but where EPA's progress has been limited. The officials also cited more program-specific areas where greater technical assistance from EPA would help them meet program requirements.

Environmental Indicators Might Improve Program Management

Environmental indicators are direct measures of the health of the environment, such as the numbers and health of specific, key flora and fauna in an ecosystem. Theoretically, these indicators can show the condition of the environment at a given point in time—a "snapshot" of environmental quality. And when measured over time, they may be able to show trends in the condition of the environment, thus enabling EPA and the states to (1) pinpoint polluted areas or areas at risk from pollution so that efforts can be made to identify and control the source(s) of the pollution and (2) assess the effectiveness of current and previous program actions. Given the increasing costs of, and static budgets for, environmental protection documented in chapter 3, EPA and state environmental officials agree that developing environmental indicators represents a way to help agencies target scarce resources to achieve maximum benefits.

Historically, however, EPA has relied predominantly on its Strategic Targeted Activities for Results System (STARS) to manage and oversee programs. STARS tracks specific program activities to measure program performance. For example, it tracks the numbers and types of inspections, permits, enforcement actions, and similar activities as measures of states' performance.

EPA and state officials acknowledge that such indicators are not as useful as environmental indicators could be but recognize that scientific and technical issues must be overcome before indicators that really measure environmental conditions and trends can be widely used. According to EPA officials, the agency is now attempting to incorporate interim measures (e.g., the number of people in a state exposed to drinking water that does not meet applicable standards) in addition to STARS.

EPA also recently initiated its National Environmental Goals Project in hopes that it will produce a set of measurable environmental goals that can be used for planning, communicating, and evaluating the nation's progress in environmental protection. The agency would like these goals

to define the desired outcomes of environmental programs, which EPA expects will heighten attention to results. Consequently, EPA believes that the goals could lead to additional flexibility for the states in determining how the outcomes should be achieved. The project has developed a preliminary list of broad environmental goal areas for which measurable goals need to be set. EPA held public meetings across the country during 1994 to discuss the draft goal areas and obtain public input.

Some progress has also been made in developing environmental indicators for specific geographic areas, such as the Chesapeake Bay Project and the Great Lakes Initiative. In these areas, environmental indicators have been effective in locating specific areas at risk from pollution and in helping EPA and the states identify actual sources of pollution. In addition, EPA and ASIWPCA are currently sponsoring an environmental indicators pilot project. State and EPA officials agree, however, that developing and using environmental indicators for an entire program or region will be an ambitious challenge.

Technical Support for Specific Programs Is Also Needed

State program managers in each of the three programs we reviewed also noted problems developing defensible standards, preparing and enforcing permit limitations, and performing other activities essential to managing their programs. For example, states have asserted that they need defensible water quality "criteria" from EPA for their water quality programs. These criteria, which identify the effects of various concentrations of pollutants on human health or aquatic life, are used by state regulators in developing water quality standards—allowable pollution limits in state waters. Water quality standards, in turn, are used by state permit writers to set discharge limits for individual facilities. Without adequate criteria for states to use in developing scientifically based water quality standards, permit discharge limits may be overprotective (and thus unnecessarily expensive) or underprotective (and thus insufficiently protective of public health and environment).

As of September 1994, however, EPA had published criteria for the full range of possible effects on human health and aquatic life for only 9 of 126 "priority pollutants." Moreover, nearly all of these criteria were developed in the early and mid-1980s, and few have been updated to reflect new scientific information. All but 1 of 72 human health criteria have been in effect since their formal publication in November 1980. EPA officials conceded that new scientific findings may justify changes to many of its

published criteria. At least one state has been reluctant to adopt EPA's outdated criteria as a basis for its water quality standards.

Despite Improvements, Communication Problems Persist Between EPA and the States

Many of the EPA and state officials we contacted for our review said that communications are better today than in the recent past. For example, federal and state managers in the three EPA programs in this review now hold regular meetings and conference calls to stay abreast of technical and management developments. In Region V, federal and state NPDES officials meet at least once or twice per quarter. Similarly, while Region V drinking water managers meet only twice per year, they have regular 2-hour conference calls. These efforts have enabled Region V staff to remain knowledgeable about state programs and to respond to common regionwide problems. Federal and state officials noted that frequent informal telephone contacts, especially on technical issues, have also improved communications.

Some state officials we contacted also said that EPA is attempting to involve states in the management process more often now than in the past. For example, Ohio NPDES and Region V staff collaborated on the Ohio Stream Regionalization Project, a successful effort to map the state by ecological regions and sample water quality, fish, and invertebrates within each region. Ohio's water quality standards are based, in part, on the project's final report. According to EPA drinking water officials, the agency has been involving the states in program/policy decisions for at least 5 years through State/EPA Early Involvement meetings. In these meetings, EPA attempts to bring together state and regional representatives for 1 or 2 days of meetings to discuss program issues. These sessions have covered the implementation of specific rules, the design of data management systems, enforcement strategies, and state grant allocations, among other things.

Despite these improvements, however, state program managers in all three regions agreed that communication could be further improved if EPA would hold meaningful, substantive consultations with them before making major decisions. Of the 47 program managers interviewed for this review, 83 percent indicated that EPA needs to do a better job of routinely consulting the states on key issues, such as new regulations or program policies, that affect them directly. According to these officials, EPA's consultations are too often perfunctory, leaving them feeling somewhat alienated and "out of the loop."

Several state RCRA officials indicated, for example, that they had not been consulted on EPA's Combustion Policy, announced in early 1993. Officials in Texas and Louisiana—two of the states most directly affected by the policy because they have most of the regulated facilities—said that they had found out about the new policy from press releases. EPA RCRA officials responded to these criticisms by noting that the agency has recently taken steps to increase the states' participation in decision-making. For example, states have had major roles in the development of the new Hazardous Waste Identification Rule, which will address EPA's criteria for listing hazardous waste under RCRA.

The EPA/State Capacity Task Force's 1993 report noted that EPA and the states should communicate more extensively and facilitate technology transfer by documenting and publishing information on innovative approaches to building states' capabilities. The task force also found that communication links between the states and EPA are inadequate for effective grants administration. To address these concerns, the task force made several specific recommendations that the agency is currently considering.

Conclusions

In addition to the program cost and funding issues discussed in the previous chapter, several other key factors, which we identified through our interviews with 47 state environmental program managers and other state and EPA officials, affect states' ability to implement environmental laws and impair the EPA/state relationship. These factors include (1) perceived inconsistencies in EPA's oversight of state programs, (2) perceived micromanagement of state programs by EPA, (3) insufficient technical support from EPA for increasingly complex state program requirements, and (4) inadequate communication between EPA and the states.

Progress has been made in addressing at least some of these issues. In particular, about 32 percent of the state officials noted some reduction in the extent to which EPA regions are viewed as exercising excessive control over their programs. Similarly, many EPA and state officials we contacted said that communications are better today than in past years. Nonetheless, the state responses suggest that although perceptions on some issues are growing more positive, significant challenges and problems remain: 63 percent of the state program managers still found the level of control EPA exerts over state programs a significant barrier to effective program implementation, and 83 percent indicated that EPA needs to further

improve communication by consulting them more effectively before making key decisions that affect them directly.

As discussed in the following chapter, many of the issues still impairing the EPA/state relationship have been discussed and debated in past years through task force reports, policy statements, and other forums. These activities have served to highlight the problems and publicize the need for reform. As that chapter notes, however, the present challenge will be to translate conceptual agreements and broad pronouncements into tangible actions—by both EPA and the states—that can resolve the problems that have long complicated the EPA/state relationship and hindered the implementation of environmental programs.

Recommendations for Improving the EPA/State Relationship

Given the perennial nature of the problems affecting the EPA/state relationship, one can reasonably ask what it would take to make real improvement in the relationship, particularly since the effectiveness of past efforts has been limited. Our work disclosed no formula that would quickly resolve problems that have persisted for decades. However, our observations of positive experiences, together with our surveys of and detailed interviews with EPA and state officials, show that success can be achieved when the parties concerned confront the long-standing problems, discussed in previous chapters, that have often made this relationship difficult.

EPA Has Tried for Years to Improve Its Relationship With the States

EPA began trying to improve its relationship with the states at least as early as 1975, when an agency task force reported that the states were unhappy with the EPA/state partnership. Indeed, our 1980 survey identified concerns that state managers continue to cite today, including, among other things, the inflexibility of EPA's regulations, the amount of control EPA exerts over states, and philosophical differences between federal and state program officials over the appropriate direction and emphasis for programs.

Among the most broad-based EPA efforts to deal with these problems was the establishment in June 1983 of a task force of senior EPA and state officials to develop options on appropriate state and federal roles in implementing environmental programs. In September 1983, the State/EPA Roles Task Force issued its report, Options for Improving the State-EPA Partnership, which concluded that the EPA/state relationship must change when EPA delegates its authority for programs to the states. According to the report, direct program administration and enforcement should be primarily state functions, and the key to EPA's future is successful state programs. The report noted that while EPA's oversight should aim to improve the performance of state programs and the quality of national programs, too many EPA officials view oversight as evaluating and correcting states' decisions.

In 1984, former Administrator William Ruckelshaus issued two policy statements that, among other things, called for clear, negotiated performance expectations so that each element of government knows what is expected of it; an opportunity for each party to appropriately influence decisions affecting its role and ability to carry them out; and a sense of mutual trust and support.[1] These policies were part of a new

[1]The two policy statements were "The EPA Policy Concerning Delegation to State and Local Governments" and "The EPA Policy on Oversight of Delegated Environmental Programs."

effort by EPA to "foster a viable and mutually beneficial partnership with the states." In so doing, the agency set forth principles stating that EPA should phase out its involvement in states' day-to-day decision-making and that it should increase its technical, administrative, and legal support for state programs. Former Administrator Lee Thomas continued this approach, noting in a 1985 speech that "We intend to do everything we can to increase the flexibility with which states and localities may implement Federal standards. We will also strengthen our technical support and oversight role."

To address continuing problems in its relationship with the states, EPA, in October 1991, created the State Capacity Task Force, which is still at work today. This task force has sought to deal with the perennial funding shortfalls affecting state environmental programs by (1) exploring the viability of creative financing mechanisms—such as fee-based revenues, public-private partnerships, and alternative financial planning—as a means of bolstering state programs; (2) examining federal investment in state infrastructure in areas such as training, information networks, laboratories, monitoring, and technical assistance; and (3) investigating ways in which improved working relationships can help states get the most out of federal financial assistance and capital investment.

More recently, a joint policy statement included, among other things, six "governing principles" designed to serve as the foundation for the EPA/state relationship and to provide a sound basis for enhancing environmental management capacity in the United States. These six principles were (1) clear goals and expectations on the part of both EPA and the states; (2) a clear assignment of roles and responsibilities that utilizes the inherent strengths each party brings to the relationship; (3) open and honest communication; (4) shared responsibility and accountability for success in promoting and implementing environmental programs; (5) mutual respect, trust, and continuous improvement, including sufficient flexibility to accommodate different perspectives and needs; and (6) a mutual commitment to pollution prevention as the principle of first choice.

What Is Needed for EPA's Recent Initiatives to Succeed Where Previous Ones Have Not?

The goals and principles set forth in the joint policy statement have been met with skepticism among most state and EPA officials we contacted, who generally agreed that while the agency has often articulated good intentions in the past, progress to date has been limited. This widespread view suggests that EPA and the states have a long way to go to reorient their relationship along the lines of the policy statement.

Our surveys and interviews with both EPA and state officials identified a number of key issues that both impair efforts by states to meet their program commitments and serve as irritants to the EPA/state relationship. Nonetheless, our findings on these issues (as discussed in chs. 3 and 4) also suggest that the measures discussed below would help greatly in achieving the positive relationship that has been so elusive.

The Resource Shortage Needs to Be Addressed

The financial gap between program needs and available resources has become the central problem affecting both the states' ability to meet program requirements and the states' relationship with EPA. The widespread recognition of this problem has contributed greatly to the "unfunded mandates" legislation proposed to reduce environmental cost burdens or prevent them from becoming more acute.

Prescriptive statutory and regulatory requirements have often exacerbated the problem by limiting the states' flexibility to achieve the most environmental protection with their limited dollars. As documented in chapter 3, states are often required to spend limited funds on problems that may be high priorities nationally but are not necessarily so in certain states.

We believe that EPA should continue to build on the efforts under way in some program offices to negotiate the allocation of each state's limited funding to correct the highest-priority environmental problems addressed under each program. While such measures alone would not bridge the states' gap between program needs and available resources, they would certainly make more effective use of the funds states are devoting to environmental protection.

Inconsistencies in EPA's Oversight Need to Be Identified and Addressed

Chapter 4 identifies cases in which regions handled similar situations differently but notes that EPA was often appropriately exercising the flexibility—authorized by many environmental statutes—to tailor national requirements to specific state and/or local circumstances. However, the

chapter also identifies (1) instances when the variation may be unwarranted and counterproductive and (2) a common perception among state environmental managers that EPA's regional offices treat the states inconsistently and that this practice may raise questions of fairness, among other problems.

EPA officials acknowledge that the states believe inconsistencies are widespread and that the agency does not know to what extent disparities exist. However, two EPA offices (the Office of Enforcement and Compliance Assurance and the Office of Solid Waste) have at least acknowledged that the issue requires closer examination. They have also acknowledged that EPA headquarters and regions may need some kind of formal mechanism to clarify how regions are to balance the desire for more flexibility to respond effectively to local circumstances with the need for consistency to achieve national expectations and goals. As noted in the last chapter, we believe these offices' open recognition of the problem and systematic efforts to deal with it could serve as a model for other headquarters offices.

More Technical Support Is Needed

In its policy statements on its relationship with the states, EPA has emphasized that providing adequate technical assistance to the states should be an agency priority. Nonetheless, the agency has frequently had great difficulty in following through on its commitments in this area, and some state programs, particularly those that are unable to perform such technical functions on their own, have been seriously disadvantaged.

Although the states' needs for program-specific technical assistance are great, state officials frequently cited EPA's difficulty in developing measurable environmental indicators as a particular problem that cuts across all programs. Given the importance of such indicators to improving the cost-effectiveness of environmental regulations, the 1993 National Performance Review, under the direction of the Vice President, recommended that EPA develop measurable environmental goals—a recommendation we made in our 1988 general management review of the agency and continue to support. EPA agreed with our recommendation and today has projects on environmental indicators under way in Regions III and V, as well as in headquarters. EPA's progress in this area, however, will be limited until scientific/technical issues can be overcome.

A More Constructive Approach to Oversight Is Needed

The states have long criticized EPA for micromanaging their environmental affairs. In our 1980 survey of state officials, for example, 71 percent identified inflexible federal regulations and 60 percent identified excessive EPA control as major obstacles to effective program management. Responses to the same questions by the 48 program managers interviewed for this study suggest that little has changed in 13 years: 74 percent cited inflexible regulations and 63 percent cited excessive EPA controls as major obstacles. EPA officials have responded that in some cases, particularly when the agency finds that a state program is not sufficiently protective of the environment, a strong EPA presence may be warranted.

Realistically, the precise nature of EPA's oversight should probably vary, depending on each state's technical capability, record of performance, and other factors. It is difficult to see why, for example, a state with an excellent program should warrant the close and time-consuming scrutiny that should be accorded to a highly deficient program. Overall, however, federal and state officials we contacted agree that EPA should, where possible, move toward allowing (and, when necessary, helping) the states to achieve environmental results without prescribing in detail how these results are to be achieved.

Better Communication Between EPA and the States Is Needed

Many state officials contacted for this review agreed that communications with their regional EPA counterparts have generally improved in recent years. Nonetheless, they also agreed overwhelmingly that EPA needs to do a better job of routinely consulting the states on key issues before making important policy decisions. They maintained that earlier, more collaborative consultations would improve the climate of the EPA/state relationship and would lead to better EPA policies and regulations.

We believe that EPA could take better advantage of its unique relationship with the states to foster greater communication and cooperation among the states themselves. Given its pervasive involvement with all state environmental programs, EPA is uniquely situated to share information of interest and concern to the states, such as innovative approaches for dealing with common problems. As the State Capacity Task Force noted in a 1993 report, however, open communication on matters of mutual interest, such as innovative approaches to state capability-building, typically does not occur.

Recommendations

We recommend that the Administrator, EPA, take the following steps to help resolve the underlying problems that have hindered the states' ability to meet minimum environmental protection requirements and have impaired the agency's relationship with the states:

- To help the states make the best use of available program funds, the Administrator should direct the agency's program offices to periodically work with the states—within the limitations of existing environmental laws—to identify how each state's limited funds can be most efficiently and effectively allocated within each program to address the states' highest-priority environmental problems.
- To deal with concerns over inconsistencies in EPA's oversight of state environmental programs, the Administrator should direct the agency's program offices to determine the extent to which variations in state standards, enforcement procedures, and other key functions reflect the appropriate exercise of flexibility authorized by law or are inappropriate and warrant corrective measures. Where inappropriate inconsistencies are deemed to exist, the Administrator should direct the program offices to issue guidance to the regions (or use other mechanisms) to ensure the fair and consistent implementation of national requirements.
- To improve EPA's regional oversight of the states, the Administrator should direct the agency's regions to periodically negotiate, with each state, a level of oversight that takes into account the ability of the state to fulfill its environmental program obligations (e.g., its track record in meeting key program requirements or its staffing and funding for meeting future requirements). As a general rule, however, the Administrator should encourage regional oversight to focus on achieving improvements in environmental quality—as measured by reliable environmental indicators—without prescribing in detail how the states are to achieve these results.
- To build on current efforts to improve communication between EPA and the states, the Administrator should direct the agency's program and regional offices to (1) consult the states as early as possible on key issues before important policy decisions are made and (2) use their unique position vis-a-vis state environmental agencies to facilitate the sharing of information on issues of interest and concern (e.g., innovative approaches to deal with common problems) among these agencies.

Finally, given the complexity of the problems facing EPA and the states and the limited progress achieved thus far in solving them, we recognize that further progress may be slow and may vary from region to region and from state to state. Accordingly, we also recommend that the Administrator

direct the agency's Office of State and Local Relations (or other office deemed appropriate) to track and periodically report to the Administrator on EPA's and the states' progress in addressing the above recommendations.

Agency Comments

As requested by the Ranking Minority Member's office, we did not obtain written agency comments on a draft of this report or seek specific comments on its recommendations. However, we discussed a draft of this report with officials, including deputy division directors and branch chiefs, in EPA's Office of State and Local Relations, Office of Groundwater and Drinking Water (responsible for implementing SDWA), Office of Wastewater Management (responsible for implementing the NPDES program), Office of Solid Waste (responsible for implementing RCRA), and Office of Enforcement and Compliance Assurance, as well as with members of the State/EPA Capacity Task Force. Generally, they characterized the information presented as fair and balanced. They offered a number of clarifications and/or corrections that were incorporated as appropriate. The following paragraphs discuss the key issues raised by the EPA officials and the revisions made in response to them.

The deputy director of the RCRA program noted, and other EPA officials agreed, that in describing the states' problems in meeting minimum program requirements, we should not convey the impression that the states are incapable of effectively managing environmental programs, but rather that they are faced with significant resource constraints that complicate their task. Our interviews with state program managers do, in fact, indicate that most states are capable of implementing effective environmental programs; however, increased program responsibilities, funding limitations, and other difficult challenges have hindered the programs' effectiveness. We have attempted to identify these systemic problems in chapters 3 and 4 and to offer recommendations in chapter 5 that would assist the states in coping with them.

In commenting on this report's discussion of perceived inconsistencies in EPA's oversight of state programs, some of the officials said that we should note their awareness of this difficult issue, although they acknowledged that they do not know the extent of the problem. They also acknowledged that if inconsistencies in EPA's oversight adversely affect the agency's relationship with the states, EPA should address this issue. We sought to ensure that our description of this issue in chapter 4, and the

recommendation on this matter in chapter 5, take these views into account.

Agency officials said they were not surprised to learn that many state managers continue to feel "micromanaged" by their EPA regional counterparts. They explained, however, that environmental laws frequently prevent EPA from giving states significant latitude in spending their funds and managing their programs. We acknowledge these constraints in chapter 4, but point out ways in which EPA's oversight can nonetheless be made more constructive. In this connection, the EPA officials also noted several recent initiatives to give the states more flexibility (within statutory limitations) and to bring them into the agency's decision-making process earlier and more substantively. We acknowledged these initiatives in chapter 4.

Major Contributors to This Report

Resources, Community, and Economic Development Division, Washington, D.C.	Steve Elstein, Assistant Director Eugene Wisnoski, Evaluator-in-Charge Lisa Pittelkau, Staff Evaluator Amy Maron, Staff Evaluator Mary Pniewski, Adviser
Dallas Regional Office	Michael Mgebroff, Staff Evaluator